

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

**FILED**  
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CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

BY: Belinda Gamez  
DEPUTY

UNITED STATES OF AMERICA, . Case No. 3:21-CR-00053-DB-1  
Plaintiff, . **\*\* VIA ZOOM TELECONFERENCE \*\***  
v. .  
MICHAEL REYES, .  
Defendant. . Wednesday, December 23, 2020  
. . . . . 10:58 a.m.

TRANSCRIPT OF PRELIMINARY/DETENTION HEARING  
BEFORE THE HONORABLE MIGUEL A. TORRES  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government: United States Attorney's Office  
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INDEX

	<u>PAGE</u>
Case called	4
Court grants continuation as to Motion To Detain	4
Government begins case in chief on Probable Cause	6
Argument on Probable Cause	
By: Ms. Rasmussen	33
By: Mr. Perez	34
Court's Ruling on Probable Cause - Granted	34
End of Proceedings	35
Certificate of Transcriber	36

INDEX

WITNESSES

PAGE

FOR THE GOVERNMENT:

Isaac Frost

Direct Examination by Ms. Rasmussen

6

Cross-Examination by Mr. Perez

16

FOR THE DEFENDANT:

(None)

EXHIBITS:

ID

EVD

FOR THE GOVERNMENT:

(None)

FOR THE DEFENDANT:

(None)

1 EL PASO, TEXAS, WEDNESDAY, DECEMBER 23, 2020, 10:58 A.M.

2 THE COURT: All right. The Court calls EP:20-M-3914,  
3 United States of America v. Michael Reyes. And we are here for  
4 a preliminary and detention hearing.

5 Let me have the announcements of counsel, please.

6 MS. RASMUSSEN: Good morning, Your Honor. Mallory  
7 Rasmussen for the United States.

8 THE COURT: Good morning.

9 MR. PEREZ: Good morning, Your Honor. Robert Perez  
10 for Michael Reyes. We are ready to proceed on the preliminary  
11 hearing, and I am asking for additional time on the detention  
12 hearing.

13 THE COURT: Okay. And what is your reason for asking  
14 for additional time on the detention hearing?

15 MR. PEREZ: I need to verify information, Your Honor.  
16 I visited with my client yesterday, and I was able to just  
17 barely make contact with the family. And there's things that I  
18 need to gather and just not enough time to be able to do it in  
19 this short time span.

20 THE COURT: Okay. Is there any objection from the  
21 Government to continuing the detention portion of the hearing?

22 MS. RASMUSSEN: No, Your Honor.

23 THE COURT: Okay. Very well.

24 So I will grant your request, Mr. Perez, for a  
25 continuance of the detention matter only, and we will get you a

1 reset on that. You know, of course, unfortunately, because of  
2 the holidays we do have a shortened week next week, as well.  
3 And so just bear with us. We'll do our best to -- there you  
4 are, we'll do our best to get this set soon. All right?

5 Very well. So then if we're ready to proceed on the  
6 preliminary, Ms. Rasmussen -- well, let me do this. Before we  
7 get started, a couple of housekeeping matters.

8 Mr. Reyes, good morning. Ordinarily, everybody that  
9 you see on the screen right here would be present in my --

10 THE DEFENDANT: Yes, sir.

11 THE COURT: -- would be present in my courtroom.  
12 We've been doing this -- we would be doing this face-to-face  
13 all of us in person. Because of the pandemic, we're unable to  
14 do that. Do I have your permission and your consent, sir, to  
15 proceed with this portion?

16 MR. PEREZ: Mr. Perez? Yes, sir?

17 Yes, sir.

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Okay. Very well.

20 Then, Ms. Rasmussen, -- thank you. Then go ahead and  
21 call your first witness, Ms. Rasmussen, please.

22 MS. RASMUSSEN: The United States calls Isaac Frost.

23 THE COURT: All right. And, Agent Frost, if you  
24 would please raise your right hand, sir.

25 ISAAC FROST, GOVERNMENT'S WITNESS, SWORN

Frost - Direct

6

1 THE COURT: Okay. You can lower your hand. You're  
2 now under oath.

3 Ms. Rasmussen, you may proceed with your questions.

4 MS. RASMUSSEN: Thank you.

5 DIRECT EXAMINATION OF ISAAC FROST

6 BY MS. RASMUSSEN:

7 Q Agent Frost, can you state your full name for the record,  
8 please?

9 A Yes, ma'am. It's Isaac Frost.

10 Q And how are you currently employed?

11 A I'm a special agent with the El Paso FBI.

12 Q Are you familiar with the investigation into Mr. Michael  
13 Reyes?

14 A I am.

15 Q Do you see him participating in this Zoom call this  
16 morning?

17 A Yes, ma'am. I do.

18 Q Could you identify him by stating the caption that's on  
19 his video screen?

20 A Yes, ma'am. It's DDF.

21 MS. RASMUSSEN: Your Honor, we'd ask that the record  
22 reflect that Agent Frost has identified the Defendant.

23 THE COURT: That's fine. And if it's helpful to you,  
24 we can have the Defendant very briefly, just very briefly,  
25 lower his mask if we can do that.

Frost - Direct

7

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right.

3 THE WITNESS: Yes, sir. That's the Defendant,  
4 Mr. Michael Reyes.

5 THE COURT: Okay. Then the record will reflect that  
6 the Defendant has been identified as Michael Reyes.

7 All right. Go ahead and proceed.

8 BY MS. RASMUSSEN:

9 Q Agent Frost, can you tell us how Mr. Reyes came to the  
10 attention of the FBI?

11 A Yes, ma'am.

12 So the FBI has what's called NTOC. It's our National  
13 Threat Operations Center. And essentially, they monitor  
14 internet-based complaints regarding threats that are made  
15 online. And on December 14, they complainant contacted the  
16 National Threat Operations Center of the FBI to report a Parler  
17 user Razer99 for (indiscernible) that they referenced as  
18 advocating murder and terrorism.

19 Q And can you tell us what Parler is?

20 A Yes, ma'am.

21 So my understanding of Parler is that it's a fairly new  
22 social media platform, and it was created because people felt  
23 like they were being censored on more traditional social media  
24 platforms such as Facebook and Instagram, and Twitter. And so  
25 it's supposed to be a platform where people will not be

Frost - Direct

8

1 censored for posting their beliefs.

2 Q And does a post on Parler or is a post on Parler viewable  
3 by other individuals?

4 A Yes, it is.

5 Q Okay. And can we talk about the particular posts made by  
6 Razer99 now? On what dates did those posts occur?

7 A So our best recollection or our best understanding of it  
8 because when someone posts on Parler, it will show how long ago  
9 the post was made. So it came to the attention of the FBI on  
10 December 14. And so when we were viewing the post, it will  
11 say, for example, nine hours ago one day ago. So our best  
12 understanding is that the posts were made from approximately  
13 December 12 of 2020 to approximately December 14 of 2020.

14 Q Okay. And what was the substance of those posts?

15 MS. RASMUSSEN: And, Your Honor, before Agent Frosts  
16 answers -- I'm sorry, I would ask that he have the ability to  
17 read a couple of these posts verbatim because I think the  
18 specific language used is important.

19 THE COURT: Is there any objection to that, Mr.  
20 Perez?

21 MR. PEREZ: No, Your Honor.

22 THE COURT: Okay. That's fine.

23 BY MS. RASMUSSEN:

24 Q Okay. Agent Frost, can you talk to us about the substance  
25 of the first post?



Frost - Direct

9

1 A Yes, ma'am.

2 So the first post that we were made aware of stated the  
3 following. It was made by user Razer99. The post was made as  
4 a response to a United States Supreme Court -- an article about  
5 the United States Supreme Court ruling about the Texas lawsuit  
6 regarding the presidential elections of 2020.

7 And the post stated:

8 "Fuck all these traitors. Since we have no support  
9 from any level of the government, then we must start  
10 killing these traitors in the streets. This is the  
11 last resort, people. And if you and" -- then it tags  
12 "@theproudboys" -- are true Americans, then you will  
13 march on Washington D.C., SCOTUS' homes, and execute  
14 those fucking traitors in their own yards, then wipe  
15 out all of Congress and take the White House.  
16 "If you are for the people, then you know this is the  
17 only course of action we have left. Fuck Congress.  
18 Fuck dead America full of traitors. Fuck SCOTUS.  
19 Fucking kill that cunt, Amy Coney Barrett, first.  
20 That cunt needs to see all her 38 children die in  
21 front of her treasonist eyes. Fucking whore."

22 Q Agent Frost, were there additional posts by Razor99?

23 A Yes, ma'am.

24 Q Can you tell us about the second post?

25 A Yes, ma'am.

Frost - Direct

10

1 The second post was referencing a news article regarding  
2 potential election fraud in Michigan. And it stated:

3 "Since the courts, our government, and Congress are  
4 all against us and are betraying our country by  
5 choosing sides with" -- I believe it was a  
6 misspelling of Satan -- "then, we the people, have  
7 the duty to execute these traitors in their homes,  
8 streets, whoever they happen to be.

9 "It is officially open season on all Democrats,  
10 Republicans, SCOTUS, White House traitors. It's time  
11 to send a clear message that traitors will die and so  
12 will their children and families. No more talk  
13 because everyone in our government has betrayed us.  
14 Kill them all and God will sort them out proper."

15 Q Did any of Razor99's posts talk about any action that he  
16 or she might take?

17 A Yes.

18 Q And what was the substance of that post?

19 A So that post in entirety stated:

20 "Welcome to the dead states of Satanica. Death and  
21 suffering is all you will find in these dead lands.  
22 Trump lied about having evidence. He lied he was for  
23 the people. The fucking whore "@sidneypowell" also  
24 lied, as well as "@lynnwood" and Guiliani and the  
25 cure (phonetic) chubby blonde. Sucks she too is a

Frost - Direct

11

1 traitor. I liked her.

2 "Satan rules our entire continent. All we do now is  
3 wait until he comes to take us to prison camps --  
4 until they come to take us to prison camps because  
5 that's where we are going or doing in the next few  
6 days to weeks.

7 "You stupid fucking cowards rolled over for these  
8 Satanic filth, so don't expect any of us to help you  
9 pussies. I know I'm dying on my terms and will kill  
10 as many of our enemies here in our country that I can  
11 possibly kill, a life amount by the hundreds to  
12 thousands if my setup is right, which I feel is  
13 almost 100 percent.

14 "Just a couple of more tweets and then it's time to  
15 feed so much traitor blood to this dead country.  
16 Good luck fellow patriots. I hope we survive long  
17 enough to fight alongside each other."

18 Q And through your investigation, were you able to identify  
19 Razor99?

20 A Yes, ma'am. We were.

21 Q How did that happen?

22 A So, initially, the National Threat Operation Center  
23 submitted some exigent requests to Parler regarding user  
24 account Razor 99, and Parler provided the email address  
25 Razor99@gmail.com and then a telephone number and an IP

Frost - Direct

12

1 address.

2 The El Paso FBI actually submitted an exigent request to  
3 AT&T for that phone number, and it came back with the user of  
4 -- the subscriber of Michael Reyes and the Mr. Reyes' home  
5 address.

6 We also submitted an exigent request to Charter  
7 Communications regarding that IP address, and it came back to  
8 Michael Reyes, as well, with his home address listed.

9 Q And is Mr. Reyes' home address located within the Western  
10 District of Texas?

11 A Yes, ma'am. It is.

12 Q Once you identified him, did you obtain a search warrant  
13 for his residence?

14 A Yes, ma'am. We did.

15 Q And what happened when you -- what did you find, excuse  
16 me, when you executed the search warrant?

17 A We found approximately two iPhones that we -- we seized  
18 that Mr. Reyes identified as belonging to him. Additionally,  
19 in the house we located a black duffel bag with an assault  
20 rifle-style rifle and four fully-loaded magazines and then a  
21 pistol, as well.

22 Q At the time of the search warrant, did you speak to Mr.  
23 Reyes?

24 A Yes, ma'am. We did.

25 Q And what did he tell you?

Frost - Direct

13

1 A So Mr. Reyes volunteered for an interview, and he made  
2 statements regarding the posts including the fact that he is  
3 the user Razor99 and that he did make the posts. He stated  
4 that he understands why they would be -- why people would view  
5 them as threatening, however, he did state that he did not have  
6 the intentions of carrying out the posts that he made.

7 Q And did he say why he posted these things?

8 A Yes, ma'am. He gave a number of reasons on the initial  
9 night that we interviewed him. Mr. Reyes had a number of  
10 personal stressors in his life recently, some family loss and  
11 then some job-related stressors relating to the pandemic. He  
12 said he specifically felt betrayed by the Conservative Party,  
13 that he felt that the most recent election was a betrayal.

14 And, amongst other things, one of his biggest concerns was  
15 that the Democrats in power would round up registered  
16 Republicans and put them in what he called concentration camps.

17 Q And what did he hope would happen or be the reaction of  
18 his posts online?

19 A So Mr. Reyes stated that he was hoping to get a reaction  
20 by making the posts. He was looking for other like-minded  
21 individuals when he made the posts because he was looking for  
22 kind of support in what he was -- was stating. However, he did  
23 state that he was not looking to create groups or to actually  
24 carry out the things that he was -- was saying in his messages.

25 Q Agent Frost, have you had an opportunity to review the two

Frost - Direct

14

1 iPhones that you seized during the search warrant?

2 A Yes, ma'am. I've done initial reviews of both iPhones.

3 Q And was anything relevant to the investigation found?

4 A Yes, ma'am. There was.

5 Q What would that be?

6 THE COURT: Can we hold on? Hold it. Hold it, hold  
7 it.

8 You all froze for about ten seconds. So the last  
9 thing that I heard, if you would please do this, was the  
10 question that have you searched the two iPhones, I think, or  
11 the two telephones is what I heard.

12 Okay. So let's just take it from there. Apologies  
13 for that. I think the problem was on my end here.

14 BY MS. RASMUSSEN:

15 Q And so, Agent Frost, have you had the opportunity to  
16 review the phones you seized?

17 A Yes, ma'am. I have.

18 Q Okay. And was there anything relevant to this  
19 investigation found?

20 A Yes, ma'am. There was.

21 Q What was that?

22 A So on the cell phone that Mr. Reyes identified as his cell  
23 phone, there was a WhatsApp conversation between an  
24 acquaintance of Mr. Reyes and Mr. Reyes.

25 Q And what was the substance of that conversation?

Frost - Cross

15

1 A So I have the -- one of the messages in front of me, and  
2 is it okay if I read directly from that message?

3 THE COURT: That's fine.

4 THE WITNESS: Okay. So Mr. Reyes stated, and I  
5 believe it was on December 15:

6 "I'm not depressed or sad, just to let you know. My  
7 anger toward what's happening in our country is  
8 what's making me step away, not because I don't love  
9 or believe in God but because of all the sacrifices  
10 made.

11 "I want to go fight for my country, for my God, my  
12 country, and loved ones, because it is pure agony at  
13 the thought that these monsters could possibly hurt  
14 someone I care about and that makes me so angry, Mr.  
15 Ramirez.

16 "And I know it's in God's hands all of our futures,  
17 and I accept that 100 percent. But the human in me  
18 wants to destroy our enemies that are murdering so  
19 many innocent children and elderly. I know God will  
20 make everything right when the time is right.

21 "So with that being said, I will most likely be at  
22 group this week. I had packed all my gear and was  
23 going to set up with a team, my buddies, but God is  
24 telling us to wait. God calmed me down so much today  
25 and is helping me see a little more clearly and past

Frost - Cross

16

1 my anger."

2 BY MS. RASMUSSEN:

3 Q And, Agent Frost, have you been able to determine where  
4 Parler's servers are located?

5 A Through open-source research, yes.

6 Q And are they located within Texas?

7 A No, ma'am. They are not.

8 MS. RASMUSSEN: I'll pass the witness.

9 THE COURT: Mr. Perez?

10 MR. PEREZ: Thank you, Your Honor.

11 CROSS-EXAMINATION OF ISAAC FROST

12 BY MR. PEREZ:

13 Q Agent Frost, I have some questions concerning when this  
14 investigation started. Was it --

15 A Yes, sir.

16 Q -- December 14?

17 A So the FBI was notified of the post, I believe, at around  
18 11 p.m. on the 14th. So it would be late night on the 14th  
19 into the morning of the 15th, sir.

20 Q Okay. And if I understand your complaint in Paragraph 3,  
21 you indicated that the FBI conducted a review of the account,  
22 the Razor account. Is that correct?

23 A Yes, sir. That is correct.

24 Q Okay. So how extensive a review of this account did you  
25 do?



Frost - Cross

17

1 A So me personally, I have not been able to review the  
2 account because by the time that our office was notified of the  
3 posts, the posts had been taken down and the account had been  
4 made private.

5 However, our -- National NTOC, our National Threat  
6 Operation Center that I referenced earlier, was able to take  
7 screenshots of the mentioned posts.

8 Q Okay. So were you looking at just two days or were you  
9 looking at the entire account of -- or history of the account?

10 A Just the two days referenced in -- that I referenced today  
11 is what I'm aware of.

12 Q So was somebody else reviewing the entire account?

13 A I'm unsure of that.

14 Q Okay. Well, if you say that what you did was limited to  
15 two days and you weren't -- you're unsure if anybody else  
16 looked at things. Was there other people looking at the  
17 account?

18 A I'm sorry, sir. What was the end of your question?

19 Q Was there other agents looking at the entire account?

20 A I'm unsure of that.

21 Q Okay. So can you say that this account that belongs to  
22 Razor previous to December 12 through the 14, if there had been  
23 any kinds of text messages that looked anything like the ones  
24 that you described right now?

25 A I'm not aware of any messages prior to December 12.

Frost - Cross

18

1 Q Okay. So prior to December 12, we have no indications of  
2 any rants. Isn't that correct?

3 A I'm unsure of that, sir.

4 Q You're not aware of any, are you?

5 A No, sir. I'm not.

6 Q Nobody has brought any of those to your attention, have  
7 they?

8 A No, sir. They have not.

9 Q There had been no suspicious activity prior to the dates  
10 that you testified of December 12 through 14?

11 A I can't speak to that, sir. I'm not aware.

12 Q Okay. Now you're saying that you were -- the NTOC is  
13 supposed to investigate threats. How do you define a threat?  
14 Is that -- what do you mean by that?

15 A So they sort of operate as an intake center, essentially  
16 allowing the public to report anything that they find to be  
17 concerning online. And then there are agents and then support  
18 staff members that kind of review those things and then forward  
19 the information to the applicable field office.

20 Q Okay. So was there a threat made to any individual  
21 person?

22 A Yes, sir. There was.

23 Q Well, he threw out a statement where he was ranting about  
24 the evilness of the United States and different things,  
25 correct?

Frost - Cross

19

1 A Yes.

2 Q He didn't send an actual email making a direct threat to  
3 anybody, did he?

4 A There was no email sent, no.

5 Q So what he posted was just something where he was upset  
6 about the election and different things that were in the news.  
7 Isn't that correct?

8 A I would disagree with that.

9 Q Okay. Would you describe what he was doing as a rant or  
10 as a direct threat to a specific person?

11 MS. RASMUSSEN: Your Honor, I'm going to object. I  
12 think the issue as to what is a threat is a legal question and  
13 not one that the agent should be answering.

14 THE COURT: I'm going to sustain the objection. You  
15 can rephrase that question, Mr. Perez.

16 MR. PEREZ: Okay. Well, I'll move on.

17 BY MR. PEREZ:

18 Q So basically what he's posting is a displeasure over some  
19 of the things that he's seeing in the news. Isn't that  
20 correct?

21 A No, sir. I would disagree with that.

22 Q Okay. He made -- you testified that he talked about the  
23 Proud Boys. Isn't that correct?

24 A He did tag the Proud Boys in one of his posts. Yes, sir.

25 Q Okay. And he wasn't threatening the Proud Boys. Was he?

Frost - Cross

20

1 A No, sir. He was not threatening the Proud Boys as far as  
2 I'm aware.

3 Q In fact, he was calling them true Americans?

4 A Yes, sir.

5 Q And that he was waiting from the word from God to carry  
6 out the will of God as far as what was going on in our country.  
7 Isn't that correct?

8 A You're -- you're mixing multiple messages here, so I would  
9 disagree with that statement.

10 Q Okay. What did he say about the Proud Boy and waiting for  
11 them to join with him to go and overtake the traitors?

12 A I could re-read that message if you'd like me to.

13 Q Sure.

14 A Okay. So he stated in that -- the message, I believe,  
15 that you're referencing:

16 "Fuck all these traitors. Since we have no support  
17 from any level of the government, then we must start  
18 killing these traitors in the streets. This is the  
19 last resort, people. And if you and @theproudboys"  
20 are true Americans, then you will march on D.C.  
21 SCOTUS' homes and execute those fucking traitors in  
22 their own yards, then wipe out all of Congress and  
23 take the White House.

24 "If you are for the people, then you know this is the  
25 only course of action we have left. Fuck Congress.

Frost - Cross

21

1 Fuck dead America full of traitors. Fuck SCOTUS.  
2 Fucking kill that cunt, Amy Coney Barrett, first.  
3 That cunt needs to see all her 38 children die in  
4 front of her treasonist eyes. Fucking whore."

5 Q Okay. And you also testified that on a phone -- in  
6 Paragraph 9, you testified that Mr. Reyes sent a text message  
7 saying that God is telling us to wait. Isn't that correct?

8 A Yes. So in addition to saying that God is telling us to  
9 wait, he also mentions that he feels a call to take action.

10 Q Okay. And you are aware that the President of the United  
11 States asked the Proud Boys specifically to stand by? Isn't  
12 that correct?

13 A I'm aware of the statement that you are speaking of.

14 Q Okay. And is that, in essence, telling people to hold on  
15 and wait for further instructions?

16 MS. RASMUSSEN: Your Honor, I'm going to object. I  
17 think that calls for the agent to opine on what the President  
18 may have meant.

19 THE COURT: Mr. Perez?

20 MR. PEREZ: Your Honor, I'm just asking for if he's  
21 aware of what the President said and told people to stand by  
22 and if that's actually was made public and pretty much  
23 everybody is aware of that.

24 THE COURT: Well, I mean that's different from the  
25 question that you were asking, which is what did the President

Frost - Cross

22

1 mean by that, essentially getting into that. But I mean to the  
2 extent that you're asking whether he's aware of that statement  
3 and --

4 MR. PEREZ: I'm just going to (indiscernible) to the  
5 statement, Your Honor, because obviously we don't know what the  
6 President meant, but just the pure words of what the President  
7 said.

8 THE COURT: All right. Look, I will -- I'm going to  
9 sustain the objection. If you want to rephrase it, I mean I'll  
10 let you get into this briefly.

11 MR. PEREZ: Okay.

12 BY MR. PEREZ:

13 Q Agent, you did testify that you were aware that the  
14 President told the Proud Boys to stand by and wait further  
15 instructions?

16 A I'm aware of that statement, yes.

17 Q And you're aware that Mr. Reyes called the Proud Boys true  
18 Americans. Isn't that correct?

19 A Yes, sir. I'm aware of that.

20 Q Okay. And you are aware that the President has been  
21 saying that our country is going to be taken over by  
22 socialists? Are you aware of that?

23 A I'm not aware of that direct statement that the President  
24 has made, no.

25 Q Okay. Are you aware of different groups that are

1 advocating civil war?

2 MS. RASMUSSEN: Your Honor, I'm going to object. I  
3 don't see the relevance of these questions to the charges at  
4 hand.

5 THE COURT: What is the relevance of this line of  
6 questioning, Mr. Perez?

7 MR. PEREZ: Your Honor, the relevance goes to my  
8 client's state of mind as to what he thinks is happening, as to  
9 whether or not he is actually going to go and carry out threats  
10 or if he's just waiting for further instructions.

11 THE COURT: Ms. Rasmussen?

12 MS. RASMUSSEN: Your Honor, I think that these  
13 statements don't have any relevance to the charges. Mr. Reyes'  
14 state of mind as to what was happening in the political world  
15 is not the focus of the charge. The focus is the language he  
16 used in these online posts and how he intended those posts to  
17 be understood and received by the reader.

18 THE COURT: You know, I'm going to sustain the  
19 objection. And, Mr. Perez, I guess what I would say with  
20 regard to this, I mean I do see what you're driving at, but I  
21 think if we could just zero in on the elements of the offense  
22 and focus our questions on that.

23 MR. PEREZ: Part of my questions also are going as to  
24 whether or not detention is appropriate, Your Honor. And I'll  
25 focus more on that at this point.

Frost - Cross

24

1 THE COURT: But it's -- yeah, I'm still sustaining  
2 the objection. Go ahead.

3 BY MR. PEREZ:

4 Q Agent Frost, you say that on the 15th of December FBI  
5 agents went to the home of Mr. Reyes?

6 A Yes, sir. That's correct.

7 Q Was he cooperative?

8 A Yes, sir. He was.

9 Q Was he polite?

10 A Yes, sir. He was.

11 Q In fact, he was pretty compliant with all of your  
12 requests. Isn't that correct?

13 A Yes, sir. He was.

14 Q And the FBI did not arrest him on December 15, did you?

15 A No, sir. We did not.

16 Q If he is such a danger to the community, why wasn't he  
17 arrested on December 15?

18 MS. RASMUSSEN: Your Honor, I'm going to object. I  
19 think the decision of whether to arrest an individual in this  
20 circumstance was left to the U.S. Attorney's Office, not to the  
21 FBI.

22 THE COURT: I'm going to overrule the objection. I  
23 mean Mr. Frost can answer if he has direct knowledge of it.

24 THE WITNESS: So, Mr. Perez, as you're kind of  
25 driving at in this case, part of what our duty is is as the FBI



Frost - Cross

25

1 is to uphold the Constitution which includes freedom of speech.  
2 And so we wanted to review all of the evidence as much as  
3 possible in its entirety to ensure that what we are doing was  
4 protecting the public and not violating someone's rights for  
5 freedom of speech.

6 So part of that was to take those cell phones and do  
7 a thorough as much as possible review of them in order to  
8 determine if there was, I guess, further intent with these  
9 threats and to determine the nature of the threats.

10 BY MR. PEREZ:

11 Q Okay. And did you have a therapist with you when you went  
12 to question Mr. Reyes?

13 A So, sir, we took the -- so it was the FBI and then also  
14 the Crisis Intervention Team with the El Paso Police  
15 Department, which is comprised of a police officer partnered  
16 with a mental health expert. I'm not sure of their exact  
17 qualifications and what their exact title is.

18 Q Okay. So when you went to question Mr. Reyes, you  
19 actually had mental health experts with you?

20 A Yes, sir. That's correct.

21 Q And I guess a mental health expert can determine if an  
22 intervention is necessary immediately. Isn't that correct?

23 A So their role, and this is just my general understanding  
24 of it, is to determine if an individual is in what they call  
25 crisis. And by the state definition of what that is, that's

Frost - Cross

26

1 basically determining if they should be placed immediately into  
2 a mental health facility against their own will. And they are  
3 the ones who would make that determination using their own set  
4 of criteria.

5 Q Okay. And, obviously, they didn't make a determination  
6 that he needed to be detained immediately. Isn't that correct?

7 A Yes, sir. They referred him for psychiatric services, but  
8 on the 15th, they did not detain him in the (indiscernible),  
9 no.

10 Q Okay. And you say they referred him to psychiatric  
11 services. Did they recommend that he go to visit with  
12 Emergence or with the psychiatrist?

13 A It may be just my connection, sir, but I'm having a hard  
14 time understanding you. I'm sorry. Could you repeat the  
15 question?

16 Q Did -- at that point, was he referred to Emergence Health  
17 Network or to a psychiatrist?

18 A I'm unsure of what referral was made. I just know that  
19 they made a psychiatric referral, and that's the extent of what  
20 my knowledge is.

21 Q Okay. And didn't Mr. Reyes follow through with that  
22 referral?

23 A Mr. Reyes informed us in his post-arrest interview that he  
24 did attend the psychiatric appointment.

25 Q And did you verify that?

Frost - Cross

27

1 A I have not verified that, no.

2 Q Okay. So when did that take place, on the 17th of  
3 December?

4 A I'm unsure of that.

5 Q Okay. So Mr. Reyes was at his home on the 16th, correct?

6 A I am not sure where Mr. Reyes was on the 16th.

7 Q You didn't keep him under surveillance?

8 A No, sir. We did not.

9 Q If you thought that he was a danger to the community,  
10 wouldn't you have kept him under surveillance?

11 A It's not part of our protocol to surveil people for 24  
12 hours a day, sir.

13 Q Well, you said part of what you're doing was to verify if  
14 there was a viable threat. Isn't that correct?

15 A Yes, sir.

16 Q Okay. So a decision was made that he didn't need to be  
17 followed after you left him on December 15, correct?

18 A Yes. I guess that would be correct.

19 Q And nobody was following him on December 16, correct?

20 A Correct.

21 Q Nobody was following him on December 17. Isn't that  
22 correct?

23 A That's correct.

24 Q And during that time period, any firearms that he had were  
25 taken into your possession. Isn't that correct?

Frost - Cross

28

1 A Yes, sir. Any firearms that we were aware of.

2 Q Would it be fair to say that you thought that any threat  
3 that was there had been neutralized?

4 A Like I said before, we were trying to gather all evidence  
5 and determine what -- to determine if there was a threat there.

6 Q Okay. And when you looked at his phone, he said that God  
7 had calmed him down. Isn't that correct?

8 A Yes. I believe at the end he said "God calmed me down so  
9 much today."

10 Q And is helping him see clearly and that his anger had  
11 passed. Isn't that correct?

12 A That is what he said at the end correct.

13 Q Okay. So a decision at some point was made to go to his  
14 apartment again on December 18?

15 A Yes. We filed a complaint and obtained an arrest warrant  
16 for Mr. Reyes on December 18.

17 Q Where did you execute it?

18 A I'm sorry. What?

19 Q Where did you execute that warrant?

20 A We executed it on his residence.

21 Q Okay. And when you went to his residence on the 18th, was  
22 he polite?

23 A Yes, sir. He was.

24 Q Was he cooperative?

25 A Yes, sir. He was.

Frost - Cross

29

1 Q Was he in any way threatening to any of the agents?

2 A No. Not to any of the agents, sir.

3 Q Didn't have any weapons that were there ready to be used,  
4 did he?

5 A I'm not sure about that.

6 Q Okay. So what do you think that he had that was ready to  
7 be used?

8 A So we did not search his house on the 18th, so I can't  
9 really speculate to whether or not he had weapons ready to be  
10 used.

11 Q Okay. You didn't see anything that was there that looked  
12 threatening for him to use against any of the agents that came  
13 to his home. Isn't that correct?

14 A Not in plain view when we arrested him. No, sir.

15 Q Okay. And did you search his home after you took him into  
16 custody?

17 A No, sir. We did not.

18 Q Okay. You didn't feel that there was a need to or you  
19 would have. Isn't that correct?

20 A No. Actually, we did not have a search warrant, so we  
21 didn't have the legal authority to search his home at that  
22 point.

23 Q Well, you could have searched incident to arrest. Isn't  
24 that correct?

25 A We could have searched windspan grasp area near him

Frost - Cross

30

1 lunging distance but, no, we cannot have searched his whole  
2 home incident to arrest. No, sir.

3 Q Okay. And you didn't see anything within his grasp or  
4 lunging area that would have been a threat to the agents.  
5 Isn't that correct?

6 A Correct, sir.

7 Q When you arrested him, did you take him into custody and  
8 question him?

9 A Yes, sir. We did question him.

10 Q Okay. And was that questioning videotaped and audiotaped?

11 A Yes, sir. It was.

12 Q Okay. And did Mr. Reyes ask for help from the agents?

13 A No, sir, he did not ask for help from the agents.

14 Q He wasn't asking for a psychiatric or mental health help?

15 A No, sir. He did not.

16 Q Okay. Did he say that he wanted to go and carry out  
17 threats against anybody?

18 A No, sir. He did not.

19 Q What did he say about any -- did he remember making any  
20 threats at that point?

21 A Yes, he did remember making the posts that we discussed.

22 Q Okay. And did he say that he mean any harm?

23 A He said that he did not mean to carry out any of the  
24 things that he said in his threats.

25 Q Okay. And you did question him and I guess (audio drop)

Frost - Cross

31

1 he was under a lot of stress?

2 THE WITNESS: Sir, I'm sorry. It may just be my  
3 headset. Is anybody else having trouble understanding Mr.  
4 Perez or is it just me?

5 THE COURT: I'm having trouble.

6 Mr. Perez, can you repeat that question? You broke  
7 up -- you've been doing fine in terms of the audio, but you  
8 broke up a little bit on that question.

9 MR. PEREZ: Okay. Let me see if I can rephrase that  
10 because I don't actually remember what I was saying.

11 BY MR. PEREZ:

12 Q When he was -- when you questions him, was that at FBI  
13 Headquarters?

14 A Yes, sir. It was.

15 Q Was he angry or expressing any anger towards the agents?

16 A He did not express any anger towards the agents, no (audio  
17 drop).

18 THE CLERK: Okay. I have audio breaking up with  
19 Agent Frost.

20 THE WITNESS: Okay. I changed my headset out because  
21 it was breaking up. But can y'all hear me now or no?

22 THE COURT: I can hear you fine.

23 THE CLERK: Yes, it sounds fine now, Agent.

24 THE WITNESS: Okay. Sorry about that.

25 MR. PEREZ: Okay.

1 BY MR. PEREZ:

2 Q How long did you question him for at FBI Headquarters?

3 A I believe the interview lasted approximately 50 minutes.

4 Q Fifteen minutes or fifty?

5 A 5-0. 5-0. Fifty minutes.

6 Q Okay. Thank you.

7 During that interview, did he tell you that he wanted to  
8 go and hurt anybody?

9 A No, sir. He did not.

10 Q In fact, it was quite the opposite, right? He was very  
11 apologetic for making any kinds of crazy statements?

12 A He did apologize for the statements that he made, yes.

13 MR. PEREZ: That's all the questions I have at this  
14 time, Your Honor.

15 THE COURT: All right. And, Ms. Rasmussen, any  
16 further questions?

17 MS. RASMUSSEN: No, Your Honor.

18 THE COURT: Okay. And so -- and Agent Frost, if you  
19 would -- I mean you can stay on, but if you'd mute yourself,  
20 I'd appreciate it.

21 Any other witnesses or evidence, Ms. Rasmussen?

22 MS. RASMUSSEN: No, Your Honor.

23 THE COURT: Any witnesses or evidence, Mr. Perez?

24 MR. PEREZ: No, Your Honor. We would reserve the  
25 right to present evidence at a detention hearing.



1 THE COURT: Absolutely. And let me go ahead and hear  
2 your argument as to probable cause, Ms. Rasmussen.

3 MS. RASMUSSEN: Yes, Your Honor.

4 The agent, Agent Frost's testimony shows that these  
5 messages on Parler were made online, they were made in a format  
6 that allowed others to view them. And the specific words used  
7 by Mr. Reyes in these messages are advocating for violence,  
8 execution of our political leaders, members of the Supreme  
9 Court. He named specific members of the Supreme Court. He  
10 named various political parties. He named the President in one  
11 of his posts.

12 And there's also a post where he talked about the  
13 actions that he planned to take, that he wanted to execute  
14 hundreds to thousands of individuals, that he was essentially  
15 working on his plan, his setup, and that that setup was almost  
16 100 percent ready to go.

17 That message of his actions that he planned to take  
18 and the preparations he made in conjunction with his statements  
19 calling for the execution of certain individuals, together we  
20 believe makes them a threatening communication. They may not  
21 have been made directly to the President or to Justice Barrett,  
22 but they were made in a format that is public and, therefore,  
23 available for others to see.

24 The servers for Parler are not located within Texas.  
25 So the communications or the messages traveled in interstate

1 commerce. Given all of that, we think we've established  
2 probable cause for the threatening communication charge.

3 THE COURT: All right. Thank you very much.

4 Mr. Perez?

5 MR. PEREZ: Your Honor, the statements that he made  
6 were, as Ms. Rasmussen stated, were not made directly to any  
7 person. And as the FBI agent said, they were concerned about  
8 people's First Amendment rights. And I'd submit that that's  
9 what he was doing is just First Amendment ranting and raving.  
10 Even though it may be a little bit extreme, at what point is it  
11 a crime.

12 And the statute, 875, is more in the terms of intent  
13 to extort or actually threatening to injure a specific person  
14 for a particular reason such as a threat to kidnap them or to  
15 get something in exchange.

16 And I don't know if we have the necessary elements to  
17 have probable cause under 18 U.S.C. 875. And that's all I  
18 would have, Your Honor.

19 THE COURT: All right. Thank you very much.

20 All right. The Court would refer to probable cause  
21 as to whether the Government has met its burden that those are  
22 an offense of 18 U.S.C. 875(c), the transmitting of  
23 communications in interstate commerce containing threats to  
24 kidnap or injure a person. I think the Government has met its  
25 burden with regard -- under the standard setup for preliminary

1 hearing.

2           So I do find that there is probable cause in this  
3 case.

4           And, Mr. Perez, with regard to detention, we will --  
5 obviously, you requested some time. We granted -- I granted a  
6 continuance so that you could look into detention matters. And  
7 we will just get you a setting, okay. Like I said, next week  
8 is a very short week, and so -- but we will do our best to get  
9 this reset soon. All right?

10           Anything else --

11           MR. PEREZ: I'll work with -- you're going to make  
12 sure that we have a date that works for both of us because I  
13 know that (indiscernible) fill up quickly.

14           THE COURT: I understand. But we -- you know, I have  
15 an obligation to give the Defendant his detention hearing that  
16 he's entitled to, so we'll work together on that to schedule  
17 that.

18           Anything else, Ms. Rasmussen?

19           MS. RASMUSSEN: No, Your Honor. Thank you.

20           THE COURT: Okay. Very well. Then we are in recess  
21 on this case.

22           (Proceedings concluded at 11:40 a.m.)

23                           \* \* \* \* \*

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**C E R T I F I C A T I O N**

I, DIPTI PATEL, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of my ability.

/s/ Dipti Patel

DIPTI PATEL, CET-997

LIBERTY TRANSCRIPTS

DATE: January 7, 2022